SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 436

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE, ET AL.,

Appellants,

vs.

ROY S. WILSON

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

STATEMENT AS TO JURISDICTION

The defendants-appellants, having presented this day their petition for appeal, now file this their statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final order, judgment or decree in question, and should exercise such jurisdiction in this case.

The Statutory Provision Believed to Sustain the Jurisdiction

This appeal, which is applied for on this 30th day of October, 1950, is prosecuted from an interlocutory judgment or decree which grants an interlocutory injunction

restraining the defendants from refusing on account of race or color to admit the plaintiff and others similarly situated and qualified to the Department of Law of Louisiana State University and Agricultural and Mechanical College, which judgment was rendered on the conclusion of the Court that plaintiff was entitled to an interlocutory injunction because the action of the defendants was by an order made by an administrative board or commission which denied the plaintiff a right guaranteed by the Fourteenth Amendment of the Constitution of the United States, the order the validity of which is involved being in the following language, to-wit:

> "Be It Resolved that pursuant to the laws of Louisiana and the policies of this Board the administrative officers are hereby directed to deny admission to the following applicants: Nephus Jefferson, Dan Columbus Simon, Willie Cleveland Patterson, Charles Edward Coney, Joseph H. Miller, Jr., Roy Samuel Wilson, Lloyd E. Milburn, Lawrence Alvin Smith, Jr., James Leo Perkins, Edison George Hogan, Harry A. Wilson, Anderson Williams."

That the right claimed by plaintiff and the rights of defendants are accordingly of substantial importance.

The interlocutory decree here appealed from was entered in the District Court of the United States for the Eastern District of Louisiana, on October 30, 1950, by a statutory Court consisting of one Circuit and two District Judges, specially convoked under the Judicial Code of the United States, and a direct appeal may be taken to the Supreme Court of the United States from a decree granting an interlocutory injunction in such case, under the provisions of U. S. C. A., Title 28, Section 1253.

A copy of the assignment of errors showing the matters in which it is contended that the Court abused its discre-

tion by granting the interlocutory injunction is attached hereto.

It is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final order, judgment or decree in question by virtue of the express provisions last above set forth.

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APPENDIX "A"

OPINION

(Number and title omitted) (Filed: October 7th, 1950)

A. P. Tureaud, W. Simpson Tate, Thurgood Marshall, Attorneys for Plaintiff.

Bolivar E. Kemp, Jr., Attorney General of the State of Louisiana; Carroll Buck, First Assistant Attorney General.

Henry C. Sevier, C. C. Bird, Jr.; Taylor, Porter, Brooks, Fuller & Phillips, C. V. Porter, L. W. Brooks, James R. Fuller, Attorneys for Defendants.

Before Borah, Circuit Judge, Christenberry, Chief Judge, and Wright, District Judge.

WRIGHT, District Judge:

By this action, which was filed on September 13, 1950, the plaintiff on his own behalf and on behalf of all Negro citizens of the United States residing in the State of Louisiana similarly situated and affected is seeking injunctions, temporary and final against defendant state officers restraining them from enforcing an order of defendant Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, an administrative board of the State of Louisiana. It is said that plaintiff made timely application for admission as a student to the Department of Law of the Louisiana State University and Agricultural and Mechanical College and complied with all of the rules and regulations governing the admission of students and that although possessing all of the qualifications entitling him to be admitted he has been denied admission pursuant to the order of said Board solely because of his race or color. In these circumstances it is said refusal to admit the plaintiff to the Department of Law of the Louisiana State University and Agricultural and Mechanical College for the purpose of pursuing a course of study he seeks, denies to the plaintiff a right guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Plaintiff's application for an interlocutory injunction was heard by this statutory court of three judges on September 29, 1950. The hearing was upon the pleadings, affidavits and depositions. On the same day the defendants filed a motion to dismiss the within action in so far as it purports to be a class action, and a hearing on this motion was likewise had, whereupon the court took time to consider and now being advised sets forth the findings of fact and conclusions of law which constitute the grounds of its motion.

Findings of Fact

1. The State of Louisiana has established, maintains and operates an institution known as the Louisiana State University and Agricultural and Mechanical College, one of the divisions of which, the Department of Law, has been in existence since the year 1906. The university operates as part of the educational system of the State of Louisiana and is maintained by appropriations from the public funds which are raised by taxation upon the citizens and taxpayers of said state.

2. The defendant Board of Supervisors of Louisiana State University and Agricultural and Mechanical College pursuant to the Constitution and laws of the State of Louisiana exercises over-all authority with reference to the regulation of the institution including the admission of students to the Department of Law.

3. The State of Louisiana has established and as a state function maintains and operates an institution known as Southern University. Admission to Southern University is limited to Negroes. There is and has been since the year 1947 a Department of Law at Southern University maintained and operated to afford an education in law to Negro students.

4. The plaintiff, Roy S. Wilson, is a Negro resident and citizen of Louisiana who possesses all the qualifications for admission to the Department of Law of Louisiana State University and Agricultural and Mechanical College as well as the Department of Law of Southern University.

5. During the period when defendants were considering applications for admission as students to the Department of Law of the Louisiana State University and Agricultural and Mechanical College for the school year 1950-51, and after complying with all of the rules and regulations governing the admission of students to said Department of Law, plaintiff applied for admission as a student. On the 28th day of July 1950 the defendant Board of Supervisors of Louisiana State University and Agricultural and Mechanical College adopted a resolution directing the administrative officers of the university to deny the application of the plaintiff and thereafter the Dean of Louisiana State University Law School advised plaintiff by letter that the State of Louisiana maintains separate schools for its white and colored students and that Louisiana State University does not admit colored students. The resolution of the Board stated that their action was "pursuant to the laws of Louisiana and the policies of this Board."

6. The State of Louisiana maintains separate schools for its white and colored students. It was conceded by both sides at the argument, and the court finds, that there is no statute or provision of the Constitution of the State of Louisiana which by its terms denies to Negroes admission to Louisiana State University and Agricultural and Mechanical College. It is however, the policy of the Board to deny Negro applicants admission to the Department of Law of the Louisiana State University and Agricultural and Mechanical College.

7. The law school of Southern University was established in the year 1947 pursuant to a definite and announced policy of the State Board of Education that there was to be a bona fide law school for Negroes of the highest possible standards and that all things necessary to be done to meet the accreditation standards of the Association of American Law Schools and the Council of Legal Education and Admission to the Bar of the American Bar Association should be done. However, the policy of the State Board of Education has not in this comparatively short period of time been effectuated and the Law School of Southern University does not afford to plaintiff educational advantages equal or sub-

sufficient cause to issue that he might receive it admitted to the Department of Law of the Louisiana State University and Agricultural and Mechanical College.

6. Louisiana State University was established in 1860 and has been in continuous operation since that time except for a short period during the Civil War when it was closed because of hostilities. The present value of its plant is $11,741,641.61. Louisiana State University is a full and regularly accredited by every recognized accrediting agency in the country. It has twelve colleges and several divisions within those colleges and offers full undergraduate degrees and professional degrees, masters degrees and doctors degrees.

8. Southern University was established in 1880 and its plant is valued at about two and one half million dollars. Southern University is not a member of the Southern Association of Colleges and Secondary Schools but it enjoys the highest rating given by the Association. Except for the Law School, Southern is merely a college and not a university.

10. The showing made raises serious questions under the Federal Constitution and discloses that enforcement of the order pending final hearing would inflict irreparable damages upon the plaintiff.

Conclusions of Law

1. This suit arises under the Constitution and laws of the United States, and seeks redress for the deprivation of civil rights guaranteed by the Fourteenth Amendment and this court is vested with jurisdiction. 28 U. S. C. § 1343; Act of April 20, 1871, Chapter 22, section 1, 17 Stat. 13, 8 U. S. C. § 43; Act of May 31, 1870, Chapter 114, section 16, 16 Stat. 144, 8 U. S. C. § 41; 28 U. S. C. § 2281. Since an application for an interlocutory injunction against the order of a State administrative board is sought on the grounds of unconstitutionality of the order, the subject matter is properly cognizable by a three judge court under Section 2281 of the Judicial Code, 28 U. S. C. § 2281. *Oklahoma Natural Gas Company* v. *Russell*, 261 U. S. 290.

2. This action is properly brought as a class action under Rule 23(a) of the Federal Rules of Civil Procedure. Defendants' motion to dismiss is accordingly denied.

3. The class which plaintiff represents is composed of the Negro citizens of the state who possess the requisite qualifications for admission to the Department of Law of the Louisiana State University and Agricultural and Mechanical College. We hold, in conformity with the equal protection clause of the Fourteenth Amendment, that the plaintiff and all others similarly qualified and situated are entitled to educational advantages and opportunities available within the state, at the same time, upon the same terms and substantially equal to those which the state provides and makes available to other residents and citizens of the state. *Sipuel v. Board of Regents of University of Oklahoma, et al.*, 332 U. S. 631; *Missouri ex rel. Gaines v. Canada, Registrar of the University of Missouri, et al.*, 305 U. S. 337; *McLaurin v. Oklahoma State Regents*, 339 U. S. 637; *Sweatt v. Painter*, 339 U. S. 629.

4. The court is of the opinion that the order of the defendant Board of Supervisors of Louisiana State University and Agricultural and Mechanical College denying admission to the plaintiff to the Department of Law solely because of his race and color denies a right guaranteed to plaintiff by the Fourteenth Amendment and that enforcement of the order, pending final hearing, would inflict irreparable damages upon the plaintiff.

It accordingly follows from what has been said that the situation presented, in our opinion, calls for the issuance of an interlocutory injunction. A decree will accordingly be entered for the plaintiff and its terms may be settled after notice.

New Orleans, Louisiana,
October 7th, 1950.

Office Supreme Court, U. S.
FILED
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

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Appellants,

vs.

ROY S. WILSON

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION TO DISMISS OR AFFIRM

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SUPREME COURT OF THE UNITED STATES

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ROY S. WILSON

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTIONS OF APPELLEE TO DISMISS OR AFFIRM

These motions are filed by the appellee pursuant to paragraph 3 of Rule 12 of the Rules of the Supreme Court, in response to the statement as to jurisdiction and other papers filed by the appellants, which urge the Supreme Court to review on appeal the judgment entered by the United States District Court for the Eastern District of Louisiana.

Statement

This case was filed in the United States District Court for the Eastern District of Louisiana on September 13, 1950. The appellee on his own behalf and on behalf of other Negro citizens of Louisiana similarly situated sought a preliminary and a final injunction against appellants who are state officers being the Board of Supervisors of Louisiana State University and administrative officers of said institution to restrain them from enforcing an order which prevented the appellee and other qualified Negroes from attending the law school of Louisiana State University.

A statutory court of three judges was convened and appellee's application for a temporary injunction was heard on September 29, 1950 upon the pleadings, depositions and affidavits. Appellant's motion to dismiss the action as a class action was heard at the same time.

On October 7, 1950 the District Court filed its findings of fact and conclusions of law. Final judgment was entered on October 30, 1950 granting the preliminary injunction. Order allowing an appeal to the Supreme Court was signed the same day.

There is no dispute as to the facts in this case. The appellee is admittedly qualified for admission to the law school of Louisiana State University. He applied for admission during the period other students were applying for the 1950-51 school year and his application was refused.

The State of Louisiana maintains separate schools for its Negro and white students. The State maintains an institution known as the Louisiana State University and Agricultural and Mechanical College which has been in existence since 1859. It also maintains Southern University for Negro students.

Louisiana State University has maintained a Department of Law since 1906. Southern University has had a law

school since 1947. A comparison of the two law schools appears in the depositions of the Deans of the respective schools.

It is conceded that there is no statute or provision of the Constitution of the State of Louisiana which by its terms denies to Negroes admission to Louisiana State University. However, it is the policy of the appellant Board of Supervisors of said institution to deny Negroes admission solely because of their race and color.

Louisiana State University has twelve colleges and several divisions and is accredited by every recognized accrediting agency. It accepts all qualified students except Negroes. Except for the law school, Southern University is a college and not a university.

The District Court found that "the Law School of Southern University does not afford to plaintiff educational advantages equal or substantially equal to those that he would receive if admitted to the Department of Law of the Louisiana State University and Agricultural and Mechanical College."

Order Involved

It is conceded that there is no statute or provision of the Constitution of the State of Louisiana which by its term denies to Negroes admission to Louisiana State University.

Appellee and others in the class on whose behalf he sues were denied admission to the law school of Louisiana State University because of the order of the Board of Supervisors of said institution which provides:

> "Be It Resolved that pursuant to the laws of Louisiana and the policies of this Board the administrative officers are hereby directed to deny admission to the following applicants: Nephus Jefferson, Dan Columbus Simon, Willie Cleveland Patterson, Charles Edward Coney, Joseph H. Miller, Jr., Roy Samuel Wilson, Lloyd E. Milburn, Lawrence Alvin Smith, Jr., James Lee

Perkins, Edison George Hogan, Harry A. Wilson, Anderson Williams."

Argument

The Statement as to Jurisdiction filed by the appellants relies upon the Assignment of Errors filed therewith and these motions are addressed to both the Statement of Jurisdiction and the Assignment of Errors.

I

In paragraph 1 of their assignment of errors, appellants allege that the District Court erred in holding that as a matter of law it was vested with jurisdiction of appellee's application for an interlocutory injunction against appellants' order which denied appellee's admission to Louisiana State University and Agricultural and Mechanical College in the terms set forth. This allegation is without merit for the following reasons:

(a) Title 28 U.S.C., section 2281 provides that a three-judge court shall hear all cases wherein plaintiff seeks to enjoin "the enforcement or execution of an order made by an administrative board or commission acting under State statutes" on the ground of its unconstitutionality. The statute under which the board herein acted, and the board's order denying admission present a procedural picture almost identical to that present in *McLaurin* v. *Oklahoma*, — U. S. —, 70 Sup. Ct. 851, decided by this Court this year. In the *McLaurin* case, *supra*, there was a board operating under a statute which provided that the board be constituted "a body corporate . . ." and had "all the powers necessary or convenient to accomplish the objectives and perform the duties prescribed by law." Title 70 Okla. Stat., section 1242. The statute under which appellant board herein operates provides that it "shall constitute a body corporate and

have power and authority to perform all acts for the benefit of the University which are incident to bodies corporate" and "to adopt and alter all rules and regulations which may be deemed necessary or convenient to accomplish the objectives and perform the duties prescribed by law . . ." Louisiana General Statutes (Dart) Section 2503.3.

Operating under the Oklahoma statute, the Oklahoma State Regents issued the following order:

> "That the Board of Regents of the University of Oklahoma authorize and direct the President of the University, and the appropriate officials of the University, to grant the application for admission to the Graduate College of G. W. McLaurin in time for Mr. McLaurin to enroll at the beginning of the term, under such rules and regulations as to segregation as the President of the University shall consider to afford to Mr. G. W. McLaurin substantially equal educational opportunities as are afforded to other persons seeking the same education in the Graduate College and that the President of the University promulgate such regulations."

Almost parallel thereto is the order of the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, which states:

> "Be It Resolved that pursuant to the laws of Louisiana and the policies of this Board the administrative officers are hereby directed to deny admission to the following applicants: Nephus Jefferson, Dan Columbus Simon, Willie Cleveland Patterson, Charles Edward Coney, Joseph H. Miller, Jr., Roy Samuel Wilson, Lloyd E. Milburn, Lawrence Alvin Smith, Jr., James Lee Perkins, Edison George Hogan, Harry A. Wilson, Anderson Williams."

The order herein involved is of the same type as the order in the *McLaurin* case. The authorizing statutes in the

two cases are almost identical. This assignment of error is therefore without merit.

II

The appellants other assignments of errors are likewise without merit.

(a) It is alleged that the Court was without jurisdiction "because no state statute is being attacked." This contention was answered by the District Court in its citation of *Oklahoma Natural Gas Company* v. *Russel,* 261 U. S. 290, In that case, Mr. Justice Holmes wrote:

> "So, if the section is construed with narrow precision it may be argued that the unconstitutionality of the order is not enough. But this court has assumed repeatedly that the section was to be taken more broadly . . . We mention the matter simply to put doubts to rest." (261 U. S. at 292)

(b) The assignment of error then asserts that the order attacked herein is not "an order made by an administrative board or commission acting under State statutes such as is cognizable by a three-judge court in view of the decisions in the cases of *Railroad Commission of Texas* v. *Pullman Company,* 312 U. S. 496, 61 S. Ct. 643, 85 L. Ed. 971; *Phillips* v. *United States,* 312 U. S. 246, 61 S. Ct. 480, 85 L. Ed. 800 and *Borges* v. *Loftis,* 87 F. 2d 734, 301 U. S. 687, 57 S. Ct. 789, 81 L. Ed. 1344, 301 U. S. 714, 57 Sup. Ct. 928, 81 L. Ed. 1365." Appellee submits that the cases in no way control this case. The *Railroad Commission* case, first did not determine the jurisdiction or lack thereof, of a three-judge court. It was a case which decided that equity, in its discretion should not enter the field of federal-state relations until after the resolution of an ambiguous state statute by state courts. Moreover, the ambiguity in question left

undecided whether the Railroad Commission had the power to issue the order under attack:

> "It is common ground that if the order is within the Commission's authority its subject matter must be included in the Commission's power to prevent 'unjust discrimination . . . and to prevent any and all other abuses' in the conduct of railroads. Whether arrangements pertaining to the staff of Pullman cars are covered by the Texas concept of 'discrimination' is far from clear. What practices of the railroads may be deemed to be 'abuses' subject to the Commission's correction is equally doubtful. Reading the Texas statutes and the Texas decisions as outsiders without special competence in Texas law, we would have little confidence in our independent judgment regarding the application of that law to the present situation. The lower court did deny that the Texas statutes sustained the Commission's assertion of power. And this represents the view of an able and experienced circuit judge of the circuit which includes Texas and of two capable district judges trained in Texas law. Had we or they no choice in the matter but to decide what is the law of the state, we should hesitate long before rejecting their forecast of Texas law. But no matter how seasoned the judgment of the district court may be, it cannot escape being a forecast rather than a determination. The last word on the meaning of Article 6445 of the Texas Civil Statutes, and therefore the last word on the statutory authority of the Railroad Commission in this case, belongs neither to us nor to the district court but to the supreme court of Texas." (312 U. S. at 499)

The case was then remanded to the same three-judge district court before which it had been brought with instructions for said court to retain jurisdiction until resolution of the ambiguity by state courts. This action in itself shows that the *Pullman* case did not define any situation in which a three-judge court *does not* have jurisdiction.

Herein there is no question of the Board's power to issue the order excluding appellee. The statute under which the board operates is clear, and neither party has questioned the power which it confers.

The *Phillips* case, *supra*, merely decided that the governor of Oklahoma, acting in his gubernatorial capacity as "Commander in Chief of the Militia of the State" was not enforcing a statute, nor acting as an administrative board, nor enforcing the orders of such board, and was therefore not subject to attack via three-judge court procedure. Concerning alleged jurisdiction stemming from a statute, the opinions stated:

> "In other words, it seeks a restraint not of a statute but of an executive action." (312 U. S. at 252)

On the jurisdictional question insofar as a three-judge court was concerned the opinion distinguished the case from the case of *Sterling* v. *Constantin*, 287 U. S. 378 wherein it was stated:

> "The Governor was sought to be restrained as part of the main objective to enjoin 'the execution of an order made by an administrative . . . commission,' and as such was indubitably within § 268." (Ibid at 253)

The third case which appellants cite is *Borges* v. *Loftis*, *supra*. The *Borges* case involved a county ordinance requiring that cattle should be subjected to a test for tuberculosis, and that tubercular cattle should be slaughtered. The Court of Appeals held that the action was premature. The Court stated:

> ". . . until there is an adverse finding as to the health of some or all of their cattle, appellants who alleged that their cattle are free from disease cannot involve the aid of the court upon the assumption that

> a well-recognized scientific test required by the ordinance will show such healthy cattle to be diseased." (87 F. 2d at 735)

The court also stated that the county ordinance there in issue was not a state statute within the meaning of what is now Title 28 U.S.C. § 2281.

The order in this case, and the board issuing it, are essentially similar to the order and board in *McLaurin* v. *Oklahoma, supra,* as hereinbefore stated.

III

The other assignments of error are directed: (a) to the finding that the State of Louisiana "does not afford to the plaintiff educational advantages equal to those he would receive if admitted to the Department of Law of Louisiana State University and Mechanical College;" and (b) to the conclusion of law that the enforcement of the order involved "denies a right guaranteed to plaintiff by the Fourteenth Amendment and that enforcement of the order, pending final hearing, would inflict irreparable damages upon the plaintiff.

The finding that the law school education offered the appellee in the segregated law school for Negroes was not equal to that offered all other qualified applicants to Louisiana State University was in direct conformity with the decision of the Supreme Court in the case of *Sweatt* v. *Painter.*

With this finding of fact there can be no doubt that such inequality denies to the appellee the equal protection of the laws guaranteed him by the Fourteenth Amendment.

Conclusion

WHEREFORE, appellee respectfully moves that the within appeal be dismissed or that the judgment of the District Court of the United States for the Eastern District of Louisiana be affirmed.

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Counsel for Appellees.

Dated: November 13, 1950.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No.

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE, ET AL,
Defendants-Appellants

Versus

ROY S. WILSON,
Plaintiff-Appellee

BRIEF OF DEFENDANTS-APPELLANTS IN OPPOSITION TO MOTIONS OF APPELLEE TO DISMISS OR AFFIRM

May It Please the Court:

The Appellee filed herein motions to dismiss or affirm pursuant to Paragraph 3 of Rule 12 of the Rules of the Supreme Court in response to the jurisdictional statement filed by appellants.

The complaint, praying for the issuance of a preliminary injunction, was filed in the United States District Court, Eastern District of Louisiana, Baton Rouge Division, and a

specially constituted District Court of the United States was convoked under the authority of Title 28, United States Code, Section 1343; Title 8, United States Code, Section 43; and Title 28, United States Code, Section 2281.

The order attacked was a resolution adopted by Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, a public corporation, organized and existing under the laws of the State of Louisiana, and particularly the Constitution of Louisiana of 1921, Article XII, Section 7, and Louisiana Revised Statutes of 1950, Title 17, Section 1451, et seq., which said resolution reads as follows:

> "BE IT RESOLVED that pursuant to the laws of Louisiana and the policies of this Board the administrative officers are hereby directed to deny admission to the following applicants: Nephus Jefferson, Dan Columbus Simon, Willie Cleveland Patterson, Charles Edward Coney, Joseph H. Miller, Jr., Roy Samuel Wilson, Lloyd E. Milburn, Lawrence Alvin Smith, Jr., James Lee Perkins, Edison George Hogan, Harry A. Wilson, Anderson Williams."

Board of Supervisors of Louisiana State University and Agricultural and Mechanical College objected to the jurisdiction of the specially constituted District Court of the United States on the authority of the following, among other, cases, to-wit: *Railroad Commission of Texas v. Pullman Company,* 312 U.S. 496, 61 S. Ct. 643, 85 L. Ed. 971; *Phillips v. United States,* 312 U.S. 246, 61 S. Ct. 480, 85 L. Ed. 800; and *Borges v. Loftis,* 87 Fed. 2d 734, 301 U. S. 687, 57 S. Ct. 789, 81 L. Ed. 1344, 301 U. S. 714, 57 S. Ct. 928, 81 L. Ed. 1366.

The specially constituted District Court took jurisdiction under the statutes above mentioned in spite of the authorities above cited, as the complainant had brought the action on his own behalf and on behalf of other Negro citizens of the United States residing in the State of Louisiana to be admitted to the Law School of Louisiana State University and Agricultural and Mechanical College, and prayed for a preliminary injunction restraining the named defendants from making any distincton on the basis of race or color in the consideration of plaintiff or any other applicant for admission to the Law School of Louisiana State University and Agricultural and Mechanical College.

The defendants answered the complaint and defended, in effect, on the ground that the State of Louisiana maintains separate schools for white and colored residents, that two Law Schools are maintained by the State of Louisiana, one of which is located at Louisiana State University and Agricultural and Mechanical College and is for white students, and the other is located at Southern University and is for colored students, both of which offer equal facilities for a legal education and admission to the bar of the State of Louisiana, and that, therefore, plaintiff and all others similarly situated are required under the law to attend Southern University Law School and are not eligible for admission to the Law School of Louisiana State University and Agricultural and Mechanical College.

The defendants offered the evidence that was immediately available within the short time allowed before trial, which evidence showed, among other things, that the State of Louisiana had appropriated for the past year an amount

of some $2800.00 for each law student of Southern University and some $600.00 for each law student of Louisiana State University and Agricultural and Mechanical College, that the faculty, equipment and facilities of both schools are substantially equal and are adequate and sufficient to fully educate and equip a student to practice law in the State of Louisiana and that graduates of both institutions have the same rights under the law to be admitted to the bar of the State of Louisiana.

The specially constituted United States District Court found for the plaintiff, but a reading of the Court's decision will show that it has misinterpreted the holdings of this Court in the cases of *McLaurin v. Oklahoma,* 94 L. Ed. 787 and *Sweatt v. Painter,* 94 L. Ed. 783.

The United States District Court abused its discretion in granting a preliminary injunction as same should not have been issued under the facts shown by defendants. The plaintiff had access at all times to Southern University Law School which satisfied the requirements of the previous holdings of this Court.

This appeal presents several serious questions of law and of fact that should be reviewed by this Court as the State of Louisiana has obviously complied in every practicable manner with the law as laid down by this Court. Appellants should not, therefore, be denied the privilege of presenting oral argument and written brief in support of their contentions.

The specially constituted United States District Court having been convoked under the above cited authorities and having rendered judgment in said case, this Honorable Court

has appellate jurisdiction under the authority of United States Code, Title 28, Section 1253. **The motions filed by appellee do not question the appellate jurisdiction of this Court.**

The motions of appellee to dismiss or affirm should, therefore, for the reasons above shown, be denied or overruled.

And defendants shall ever so pray.

Respectfully submitted,

BOLIVAR E. KEMP, JR.
Attorney General of the State of Louisiana
CARROLL BUCK
First Assistant Attorney General
HENRY C. SEVIER
C. C. BIRD, JR.
TAYLOR, PORTER, BROOKS, FULLER & PHILLIPS
C. V. PORTER
L. W. BROOKS
JAMES R. FULLER

Baton Rouge, Louisiana,
November 29, 1950.

CERTIFICATE

I, L. W. Brooks, of counsel for defendants-appellants in the above entitled action, hereby certify that on the 29th day of November, 1950, I served copies of the foregoing brief upon the attorneys for the plaintiff-appellee by depositing same in the United States mails, postpaid, addressed to them as follows:

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612 Iberville Street,
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Baton Rouge, Louisiana, November 29, 1950.

L. W. Brooks

L. W. BROOKS.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 436

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE, ET AL.,

Defendants-Appellants

VERSUS

ROY S. WILSON,

Plaintiff-Appellee

PETITION OF DEFENDANTS-APPELLANTS FOR REHEARING

Defendants-appellants, on the grounds following, petition for rehearing in the above action, and in connection therewith respectfully represent:

In pursuance to a motion of appellee in this case to dismiss the appeal or to affirm the judgment of the District Court of the United States for the Eastern District of Louisiana, sitting as a three judge court, this Honorable Court, by a per curiam of date January 2, 1951, affirmed the said judgment granting an interlocutory injunction against these petitioners, citing

without comment *Sweatt v. Painter*, 94 L. Ed. 783, and *McLaurin v. Oklahoma*, 94 L. Ed. 787.

Petitioners contend that this Honorable Court should in no event have affirmed the judgment without a hearing upon the appeal before this Honorable Court.

Petitioners contend that the three judge District Court did not have jurisdiction to entertain this action. Such a court should only have entertained this action if it were an action to have declared unconstitutional some statute of a state or some administrative order having the force and effect of a statute. There is no constitutional or statutory provision in Louisiana that is being attacked in this action. There is no order "made by an administrative board or commission acting under State statutes" which is being attacked as unconstitutional.

In the case of *McLaurin v. Board of Regents*, cited by this Court and relied on by counsel for present plaintiff, counsel for this plaintiff said that the action of the defendant Board of Regents was "operating under a statute which provided that the Board be constituted a 'body corporate.'" Counsel then stated that that statute giving general powers to the Board of Regents of the University of Oklahoma was identical in effect to the statute giving general powers to the Board of Supervisors in this instant case.

This is overlooking the fact which Your Honorable Court pointed out in the *McLaurin* case that the action of the Board was "obviously imposed in order to comply, as nearly as could be, with the statutory requirements of Oklahoma," which **statutory** provisions, as can be plainly seen, were the provi-

sions requiring segregation and not merely provisions creating the Board. A mere resolution of a board not predicated on any statute is not subject to attack for unconstitutionality in an action before a three judge court. See

Borges v. Loftis, 87 Fed. 2d 734, 301 U.S. 687, 57 S. Ct. 789, 81 L. Ed. 1344, 301 U.S. 714, 57 S. Ct. 928, 81 L. Ed. 1366;

Phillips v. United States, 312 U. S. 246, 61 S. Ct. 480, 85 L. Ed. 800;

Railroad Commission of Texas v. Pullman Company, 312 U.S. 496, 61 S. Ct. 643, 85 L. Ed. 971.

This Honorable Court, merely because the District Court did not have jurisdiction, ought not dismiss the appeal but should set aside the judgment and send the suit back to be proceeded with by the District Court in a proper manner, which petitioners contend is clearly the ordinary procedure before one judge. See

Rorick v. Board of Commissioners, 307 U.S. 208, 83 L. Ed. 1242;

Jameson v. Morganthau, 307 U.S. 171, 83 L. Ed. 1189.

If the District Court of three judges was entitled to take jurisdiction of this case, which petitioners deny, petitioners contend that this Honorable Court should have entertained and heard the appeal under the provisions of Title 28, Section 1253, United States Code, which says:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceed-

ing required by any Act of Congress to be heard and determined by a district court of three judges."

Appellants feel that so grave and important a question should not be decided without a hearing before this Honorable Court.

The appeal was a serious and not a frivolous one, and was not one in which delay was being sought since the interlocutory injunction was in full force and the plaintiff was and is now enjoying the rights which he claimed that he was entitled to have protected by the injunction.

This Honorable Court has, in its per curiam, merely referred to the two cases of *Sweatt v. Painter* and *McLaurin v. Oklahoma State Regents.*

Under these circumstances we realize that this Honorable Court has accepted the *Sweatt* case as a yardstick by which can be determined the question of whether or not the plaintiff is deprived of his civil rights in a case of this character.

We respectfully suggest that, even using that case as a criterion, there was no deprivation of civil rights in the instant case.

This Honorable Court has said in the *Sweatt* case that the petitioner might claim as his full constitutional right "legal education equivalent to that offered by the State to students of other races" and that such education was not available to the petitioner in the situation of **promised** equal opportunities

which were all that the State of Texas was able to show in the *Sweatt* case.

Your Honorable Court has quoted with approval the case of *Sipuel v. Board of Regents*, 332 U.S. 631, 92 L. Ed. 247, which held, with regard to furnishing equal protection of the laws:

> "The State must provide it for her (Sipuel) in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group."

Defendants earnestly urge that they be given the privilege of demonstrating that the State of Louisiana has furnished this full constitutional right as soon as applied for, without admitting this plaintiff to the Louisiana State University and Agricultural and Mechanical College.

At the time that this suit was brought Southern University (which had already accepted this plaintiff as a student of law) had an actual law school in existence, with a curriculum, to all intents and purposes, identical with that of Louisiana State University, with competent teachers and an excellent and adequate library, and with everything that was necessary to fit a student of law for what Your Honorable Court has said "is a highly learned profession" but "is an intensely practical one."

This law school at Southern University is not in what Your Honorable Court has called an "intellectual vacuum" but is in an institution that has more "ivy on its walls" than the

present Louisiana State University and Agricultural and Mechanical College.

The Law School of Louisiana State University is not an institution like those of some of the great universities which equip students for the legal profession throughout the English speaking world. The Law School of Louisiana State University, because of the peculiar character of the laws of that State, furnishes nothing more than a practical method of enabling a student to gain admission to the Bar of Louisiana and be competently prepared to practice at that Bar. This is equally offered by the Law School of Southern University.

Colonel George T. Madison, President of the State Board of Education which has the supervision of Southern University and who is also a distinguished member of the Bar and a graduate of Tulane University, has made an affidavit, which is a part of the record herein, that the graduates of Southern University Law School have every opportunity to be as well qualified for the practice of law in Louisiana as the graduates of Louisiana State University Law School, and we do not believe that that testimony can be questioned.

This Honorable Court has said in the *Sweatt* case that it will "adhere to the principle of deciding constitutional questions only in the context of the particular case before the Court" and that "such decisions will be drawn as narrowly as possible." Accepting this limitation, your Honors have **refused to overrule previous decisions** and have simply decided that the State of Texas, with its makeshift school, originated as a separate institution after the suit was brought, did not offer equal opportunities, and that the State of Oklahoma, having received a negro student in the University of Oklahoma,

should give him the same rights therein which were given to white students.

Your Honors have also most wisely stated in the *McLaurin* case that the removal of State restrictions would not necessarily remove individual and group predilections, prejudices and choices.

In view of these principles, we respectfully urge that these appellants should have been given the opportunity to present their case and to show whether or not, in their particular context, equal opportunities have been furnished. To deny this right, we respectfully urge, is, in effect, to overrule both the *Sweatt* and the *McLaurin* decisions.

To deny this right, we respectfully urge, would be tantamount to saying that the negro race has an inherent inferiority which renders its teachers and students incapable of furnishing adequate intellectual associations and that, for that reason, attendance at Southern University Law School, regardless of its quality, must be a deprivation of civil rights.

We respectfully suggest that this Honorable Court grant a rehearing in this matter.

WHEREFORE, petitioners pray that a rehearing be granted in the above numbered and entitled case by this Honorable Court, and that the per curiam judgment affirming the decree of the District Court of the United States for the Eastern District of Louisiana granting an interlocutory injunction be set aside, and that petitioners be permitted to present and argue their appeal before this Honorable Court, and that, in due

course, the aforesaid decree of the District Court of three judges granting the said preliminary injunction be reversed.

Respectfully submitted,

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January 10, 1951.

— CERTIFICATE —

We hereby certify that the foregoing petition for rehearing is believed to be meritorious and is presented in good faith and not for delay.

We also certify that on this day we served copies of the foregoing petition upon the attorneys for the plaintiff-appellee

by depositing same in the United States mails, postpaid, addressed to them as follows:

A. P. Tureaud,
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New Orleans, Louisiana.

U. Simpson Tate,
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Baton Rouge, Louisiana, January 11th, 1951.

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No. 436. BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE ET AL. *v.* WILSON. Appeal from the United States District Court for the Eastern District of Louisiana. *Per Curiam:* The motion to affirm is granted and the judgment is affirmed. *Sweatt* v. *Painter*, 339 U. S. 629; *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637. *Bolivar E. Kemp, Jr.*, Attorney General of Louisiana, *Carroll Buck*, First Assistant Attorney General, *C. V. Porter* and *L. W. Brooks* for appellants. *A. P. Tureaud* and *Thurgood Marshall* for appellee. Reported below: 92 F. Supp. 986.